

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4683 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DIVISIONAL CONTROLLER

Versus

CONCILIATION OFFICER

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Appearance:

MR HARDIK C RAWAL for Petitioner  
MR ANANT S DAVE for Respondent No. 1  
NOTICE SERVED for Respondent No. 2

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CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 19/12/98

ORAL JUDGEMENT

Gujarat State Road Transport Corporation through its Divisional Controller, Ahmedabad, has filed this Special Civil Application challenging the order passed by the Conciliation Officer, Ahmedabad on 30th April 1985 under section 33 (2) (b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the ID Act).

2. Respondent No.2 (hereinafter referred to as the workman) was working with the GSRTC as a Conductor. The

workman was dismissed w.e.f. 18.9.1984. GSRTC forwarded an application for approval under section 33 (2) (b) of the ID Act. On behalf of the Workman it was submitted that he should have been paid Rs.1088/-, but he was paid only Rs.1078/60 and as less amount was paid, it can be said that he has not been paid the amount as required to be paid under law. It was also contended that the opponent has not been paid washing allowance. It clearly appears that the workman was paid his pay, DA, and House Rent Allowance, totalling to Rs.1078-60. Conciliation Officer, vide Annexure 'A', disallowed the approval application stating that employer, by not paying one month's full salary, has not complied with condition.

3. Before the Division Bench, when the matter was placed for admission on 8.9.1986, the Division Bench issued Rule and granted ad-interim relief in terms of paragraph 8 (B) of this petition, i.e. to the effect that pending the hearing and final disposal of this petition, the operation of the aforesaid order, Annx. 'A', is stayed.

4. The relevant provision which this Court has to consider in this case is proviso to sub-section (2) of Section 33 of the ID Act. Section 33 reads as under :-

33(1). During the pendency of any conciliation proceedings before a conciliation officer or a Board of any proceedings before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall, -

(a). in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or,

(b). for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute,

save with express permission in writing of the authority before which the proceeding is pending.

(2). During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing

orders applicable to a workman concerned in such dispute, or where there are no such standing orders in accordance with the terms of the contract, whether express or implied, between him and the workman,

- (a). alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or
- (b). for any misconduct not connected with the dispute, discharge or punish whether by dismissal or otherwise, that workman :

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer"

4.1 Thus, from a bare reading of the aforesaid proviso it clearly transpires that (1). there must be action of discharge or dismissal; (2). payment of wages for one month must be paid; and, (3). an application for approval of the action taken by the employer should be made by the employer to the authority before which the proceedings are pending. In the instant case, I find that after the order of dismissal was passed, an application was made for approval and the amount of wages were paid. The dispute raised by the Workman is that he was not paid washing allowance. Reading the section with proviso, it is clear that the workman is required to be paid wages for one month. In the instant case, as said earlier, there is compliance with section 33 (2) (b) inasmuch as (1). there is an order of dismissal; (2). there is payment of wages for one month; and (3). there is an application for approval of the action taken. If the amount of washing allowance is not paid as contended by the workman, can it be said that the action of GSRTC suffers from any infirmity?

5. One has to look at the object of section 33 (2) (b). The section is required to be read in a reasonable manner and taking any other meaning would lead to extremely anomalous situation. In the case of GANDHI PRAKASHCHANDRA H. vs. G.S.R.T.C. reported in 1996 (2) GLR 546, a contention was raised that the payment of one month is not in accordance with the provisions of section

33 (2) (b) of the ID Act as the workman was paid salary for 30 days instead of 31 days. One has to consider what is the intention of the legislature in making this provision. There will be unemployment for a period of one month following the dismissal. The legislature has not intended that after a month further wages are required to be paid. The main object of section 33 (2) (b) of the Act is to soften the rigour of unemployment to be faced by the workman. Considering that as the primary object, if a workman is paid salary, DA and House Rent Allowance, can it be said that he was not paid wages? In the next month, he was not required to be on duty, and, therefore, he was not required to get his uniform washed for attending the duty. It appears that on 20.2.1985, even a further amount has been paid, which is less than Rs.10/- to make the total of wages etc. as per say of an employee.

6. A Division Bench of the Orissa High Court in the case of PRAKASH CHANDRA vs. INDUSTRIAL TRIBUNAL, Orissa reported in 1980 LABOUR IC 336 held that backwages to be paid under this provision will not include conveyance allowance for the period during which the workman has not actually worked. In case of Prakashchandra (supra), the question of Payment of Wages Act 1936 was considered. It was submitted that the conveyance allowance/travelling allowance is only given to the employees towards expenses they incur while going for work. As the workman had not actually worked for three months for which he has been paid the wages, it was contended that he was not entitled to receive any conveyance allowance. The learned Judges of the Division Bench held that there is some force in the contention and the same is required to be accepted, and ultimately held that the petitioner was not entitled to conveyance allowance at the rate of Rs.20/- per month as claimed.

7. In the instant case, washing allowance was not paid as he was not required to work. Obviously, the question of washing the uniform which was required to be put on while discharging the duties does not arise as for that period, he was not to be on duty. Apart from that, in the instant case, the disputed amount has subsequently been paid with a view to see that there is no further dispute. Therefore, the order passed by the Conciliation Officer is required to be quashed and set aside, and is hereby quashed and set aside. It is further directed that the report submitted by the GSRTC shall be considered in accordance with law. The petition stands allowed accordingly. Rule made absolute. No order as to costs.

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